

African Union replaces Organization of African Unity

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A. Introduction

[1] During their inaugural meeting in Durban, South Africa, on 9 July 2002 the African heads of state replaced the 39-year-old Organization of African Unity (OAU) with the latest international organization: the African Union (AU). With the exception of Morocco that was not a member of the OAU and Madagascar, whose president is not recognized by the OAU/AU all African heads of state attended the ceremony (1). The AU will be headquartered in Addis Ababa in the Federal Democratic Republic of Ethiopia (2).

B. History

[2] The OAU was set up on May 25th, 1963 Addis Ababa, to promote unity and solidarity among African states (3). The organization was to a large extent characterized by the challenges of coping with the colonial past. The eradication of all forms of colonialism from Africa was one of the goals of the OAU mentioned in Art. II para. 1 of the OAU Charter (4). Moreover there was the problem of flawed colonial boundaries and the fear of intervention in internal affairs of other countries (5). It is in this context that non-interference in the internal affairs of other states became one of the principles of the organization (6).

[3] Over time the priorities of the OAU started to change. Human rights became a more important concern and in 1981 the African Charter on Human and Peoples' Rights was adopted (7). With the end of the cold war the OAU had to reconsider its role in African development. African leaders recognized that ever-present conflicts on the African continent badly hurt African development and in 1993 the OAU Mechanism for Conflict Prevention, Management and Resolution was adopted. With the new mechanism, intervention in what was formerly considered as internal conflicts became possible, but the charter's stress on non-intervention became one factor in the mechanism's lack of effectiveness (8).

[4] Finally with the end of apartheid in South Africa the major goals of the OAU had been achieved and the dreams of a united Africa regained momentum. In 1999 the OAU Assembly of Heads of State and Government passed the Sirte Declaration calling for the establishment of an African Union to address new social, political and economic realities and to eliminate conflicts (9). On 12 June 2000 the OAU Assembly of Heads of State and Government adopted the Constitutive Act of the African Union that provides for its entry into force 30 days after deposit of the instruments of ratification by two-thirds of the Member States of the OAU, i.e. 36 states (10). After the ratification of Nigeria as the 36th state the Act entered into force on 26 May 2001 (11). Because of the transitional arrangements contained in Art. 33 of the Constitutive Act the AU did not replace the OAU until the Durban meeting.

C. Provisions of the Constitutive Act of the AU

I. Objectives and Principles, Sanctions

[5] The provisions concerning objectives (Art. 3 of the Constitutive Act) and principles (Art. 4) of the AU show an important change in emphasis and principles of the two organizations. Most important the principle of non-intervention has obtained rather important exceptions. While the defense of sovereignty, territorial integrity and independence of member states is still an objective of the Union (Art. 3 (b)) and sovereign equality and respect of existing borders as well as non-interference by member states in the internal affairs of others are principles of the AU (Art. 4 (a), (b), (f)) there are now two cases in which the Union may intervene in a Member State. An intervention is possible "pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity" (Art. 4 (h)) and upon request of a member state "in order to restore peace and security" (Art. 4 (j)). Generally the union wants to further peaceful co-existence and prohibits the use of force or threat to use force (Art. 4 (f), (i)).

[6] Also human rights have gained importance in the AU. Thus promotion of gender equality and social justice, respect for democratic principles, human rights, the rule of law, the sanctity of human life, condemnation of impunity and political assassinations and acts of terrorism (Art. 4 (l), (m), (n), (o)) are principles of the AU. Promotion of democratic principles, popular participation, good governance and human rights as established in accordance with the African Charter and other human rights instruments are goals of the AU (Art. 3 (g), (h)). Art. 3 (e) refers to international cooperation, taking account of the Universal Declaration of Human Rights. Also the prevailing pandemics like HIV have been addressed by stressing the need to work with relevant international partners in the eradication of preventable diseases and the promotion of good health (Art. 3 (n)).

[7] As can already be seen by the cited provisions a further emphasis of the AU is on the promotion of good

governance, an issue which is also addressed by NEPAD, the New Partnership for Africa's Development (12). The AU explicitly condemns and rejects unconstitutional changes of governments (Art. 4 (p)). Governments which came to power through such unconstitutional means "shall not be allowed to participate in the activities of the Union." (Art. 30). Sanctions are possible if a member state fails to comply with the decisions and policies of the Union. Sanctions for such acts include denial of transport and communication links and other measures of a political and economic nature (Art. 23 para. 1) (13). If these provisions are really sufficient will have to be discussed *infra*.

[8] Finally a further set of goals and principles concerns one of the main reasons for which the AU has been set up: economic development. While the references concerning good governance already point in this direction, further statements include the goal to promote research (Art. 3 (n)), promote cooperation to raise living standards (Art. 3 (k)) and accelerate the political and socio-economic integration of the continent (Art. 3 (c)).

II. Organs of the Union

[9] The AU is loosely modeled after the European Union (14). The "supreme organ" is the Assembly, composed of the heads of state and meeting annually (15). Decisions in the Assembly are taken by consensus or, failing which, by a two-thirds majority. Procedural matters, including the question of whether a question is procedural, are decided by a simple majority. The quorum is two-thirds of total membership (16). The Assembly determines the policies of the Union, monitors the implementation of policies and decisions, considers requests for membership, adopts the budget, gives directives to the Executive Council on the management of conflicts and decides on sanctions (17). The Assembly has its predecessor in the Assembly of Heads of States and Government of the OAU (18).

[10] The Executive Council, composed of the Ministers of Foreign Affairs or other ministers designated, meets twice a year to coordinate and take decisions on policies in areas of common interest to the Member States (19). Such areas include foreign trade, energy and mineral resources, food and agriculture, water, environmental protection, education, health, science and technology (20). The Executive Council is responsible to the Assembly and monitors the implementation of policies formulated by the Assembly (21). The predecessor of this organ was the Council of Ministers of the OAU (22).

[11] Technical Committees responsible to the Executive Council and composed of ministers or senior officials will prepare projects and programs of the Union, ensure the supervision of decisions taken by organs of the union and submit reports and recommendations to the Executive Council (23). Seven such committees are set up by the Constitutive Act (e.g. for rural economy and agricultural matters or for health, labour and social affairs). The Assembly may restructure the existing committees or add new ones (24).

[12] There will also be a Permanent Representative Committee, consisting of permanent representatives to the union and charged with preparing the work of the Executive Council (25).

[13] A Commission will function as the Secretariat of the Union. It is composed of the Chairman, a deputy and 8 commissioners (26). The Constitutive Act does not lay down the functions and structure of the Commission but leaves that to the Assembly (27).

[14] Art. 17 provides for a Pan-African Parliament, but the details are left to a protocol. The same is true for the Court of Justice of the Union (Art. 18).

[15] Further organs of the Union will be the Economic, Social and Cultural Council as an advisory organ (Art. 22) and The African Central Bank, The African Monetary Fund as well as The African Investment Bank whose rules and regulations will be defined in protocols (Art. 19).

D. Evaluation

[16] While some of the changes, especially in matters of intervention and human rights are certainly laudable improvements over the old OAU, the reception of the AU has been rather lukewarm. That criticism is partly due to the fact that the African Union was largely the brainchild of Libyan leader Moammar Ghadhafi. He also wanted both the Pan-African Parliament (even though he does not tolerate a parliament in his own country) and the founding meeting to be located in Libya (28). Opposed to Ghadhafi are the progressive forces led by the South African president Mbeki that are also promoting NEPAD, a hopeful initiative that promotes good governance to further African development. While Mbeki prevailed in the conflicts concerning location of opening meeting and parliament, the future is yet uncertain. With his abundant oil money Ghadhafi provides funding to the AU and other countries that will enable him to buy influence in the new organization. He already obtained some influence on NEPAD – an initiative he might well destroy given his stern opposition to any conditions for economic aid to African countries (29).

[17] A further western concern stems from the treatment of Zimbabwe. Mugabe's 2002 rigged election victory was endorsed by many African leaders (30) and Mugabe attended the founding meeting of the AU, despite the violent

"land reform" process violating the rights of white farmers and arrests of journalists and opposition party members (31). It is questionable whether the commitment to democracy can be taken seriously if the likes of Ghadhafi and Mugabe obtain prominent positions in the organization. The Constitutive Act lacks protection in this respect. It does not bar dictatorships from entry into the AU. According to Art. 29 any African state may be admitted by a simple majority of the member states. Only governments that came to power through unconstitutional means shall not be allowed to participate, but even that statement could be reduced to lip-service if Mugabe is accepted by the AU without criticism.

[18] An overall evaluation of the AU will have to wait. Many of the bodies envisaged by the Constitutive Act have, most importantly parliament and court, have not yet been set up. Many of the provisions have not yet been tested. While the wording of the Constitutive Act points in the right direction and gives hope, hopeful documents alone are not enough to help Africa out of its disastrous situation. It will be up to African leaders to prove that more changes occurred than just an O being scrapped from "OAU".

(1) See Lancierung der Afrikanischen Union in Durban, Neue Zürcher Zeitung, 10 July 2002. As of 18 June 2002 the Constitutive Act of the African Union has been ratified by 48 countries.

(2) Art. 24 Constitutive Act of the African Union (hereinafter Constitutive Act), available at <http://www.dfa.gov.za/for-relations/multilateral/treaties/auact.htm>.

(3) See Art. II (1) (a) OAU Charter, accessible at <http://www.dfa.gov.za/for-relations/multilateral/treaties/oauchart.htm> (6/5/2001). See generally YASSIN EL-AYOUTY, THE ORGANIZATION OF AFRICAN UNITY AFTER THIRTY YEARS, 3 (1994).

(4) Art. II (1) (d) OAU Charter.

(5) See YASSIN EL-AYOUTY, *supra* note 1, at 3 et sequ. (talking of a peace-keeping "allergy" for fear of imperialistic use of such instruments). Some

(6) Art. III (2) OAU Charter. The doctrine was handled somewhat flexibly to try to broker peace agreements in internal conflicts. See The OAU in African Conflicts, West Africa 1st-7th July 2002.

(7) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at <http://www1.umn.edu/humanrts/instree/z1afchar.htm>. See Towards a Human Rights Agenda, West Africa 1st-7th July 2002.

(8) Monde Muyangwa & Margaret A. Vogt, An Assessment of the OAU Mechanism for Conflict Prevention, Management and Resolution, 1993-2000, available at <http://www.ipacademy.org/Publications/Reports/Africa/PublRepoAfriAssessPrint.htm#part2>.

(9) See Department of Foreign Affairs, Republic of South Africa, Transition from the OAU to the African Union, May 2002, at http://www.au2002.gov.za/docs/background/oaau_to_au.htm. The Sirte Declaration is available at <http://www.uneca.org/adfiii/riefforts/ref/other5.htm>.

(10) Art. 28 Constitutive Act of the African Union, available at <http://www.dfa.gov.za/for-relations/multilateral/treaties/auact.htm>.

(11) See Department of Foreign Affairs, Republic of South Africa, *supra* note 7.

(12) See NEPAD, at <http://www.nepad.org/>.

(13) Sanctions can also be imposed if a state defaults on payment of its contributions (Art. 23 (2)).

(14) An das Vorbild EU angelehnt. Afrikaner einig über Gremien, Frankfurter Rundschau, 10 July 2002; Department of Foreign Affairs, Republic of South Africa, Background on the African Union and the New African Initiative, at <http://www.dfa.gov.za/events/auback.htm> (19 July 2001)

(15) Art. 6 (1), (2), (3) Constitutive Act.

(16) Art. 7 Constitutive Act.

- (17) Art. 9, 23 Constitutive Act.
- (18) Art. VIII et sequ. OAU Charter, See An das Vorbild EU angelehnt, supra note 13.
- (19) Art. 10, 13 Constitutive Act.
- (20) Art. 13 Constitutive Act.
- (21) Art. 13 (2) Constitutive Act.
- (22) Art. XII et sequ. OAU Charter, See An das Vorbild EU angelehnt, supra note 13.
- (23) Art. 14, 15 Constitutive Act.
- (24) Art. 14 Constitutive Act.
- (25) Art. 21 Constitutive Act.
- (26) Art. 20 Constitutive Act, Communication and Publications Division of the OAU, The Union is here at last, West Africa, 1st-7th July 2002.
- (27) Art. 20 Constitutive Act.
- (28) Afrikas Hoffnung auf Frieden, Neue Zürcher Zeitung, 7 July 2002.
- (29) Die Afrikanische Union – Zukunftsmusik, Neue Zürcher Zeitung, 9 July 2002.
- (30) Africa Backs Mugabe Win, BBC, 14 March 2002, at http://news.bbc.co.uk/1/hi/english/world/africa/newsid_1871000/1871611.stm.
- (31) See Zimbabwe Warns White Farmers' Union, BBC, 28 May 2002, at http://news.bbc.co.uk/1/hi/english/world/africa/newsid_2012000/2012136.stm; Konfliktscheue Afrikanische Union?, Neue Zürcher Zeitung, 5 July 2002.